

COUNTY NOTICES PURSUANT TO A.R.S. § 49-112

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NOTICE OF PROPOSED RULEMAKING

PURSUANT TO A.R.S. § 49-471.01 et seq.

PINAL COUNTY AIR QUALITY CONTROL DISTRICT

[M08-276]

1. Preamble

2. The Pinal County Air Quality Control District, an operating division of Pinal County, proposes that the Board of Supervisors adopt new rules in response to recent legislative mandates. Those mandates require dust-proofing or stabilization for certain parking, ingress and egress areas in that portion of Pinal County lying within the Phoenix Planning Area PM10 nonattainment area. See A.R.S. §§49-474.01(A)(5) and (A)(6). Those dust-proofing and stabilization requirements apply in the Apache Junction Township, Township 1 North, Range 8 East, Gila and Salt River Base and Meridian ("T1N R8E"). The mandates also require restrictions on vehicle parking and use on unpaved or unstabilized lots. See A.R.S. §49-474.01(A)(11). Those restrictions apply in the Pinal-portion of Area A as defined in A.R.S. §49-541. The mandates also require adoption of a process to require stabilization of disturbed surfaces at vacant lots. See A.R.S. §49-474.01(A)(11). That mandate also pertains to T1N R8E.
3. The purpose of this notice is to alert all persons who may be affected by the aforementioned statutory mandates that their interests may be affected; that the subject matter of this rulemaking involves fully and fairly satisfying those statutory mandates; and that the final rules as approved by the Board of Supervisors may include whatever additional revisions may be required to fully and fairly respond to those statutory mandates.
4. Those wishing further information regarding any aspect of this proposal may contact Scott DiBiase, Planning Manager, Pinal County Air Quality, 31 North Pinal St., Building F, Florence, Arizona, 520-866-6969. To the extent possible, the District will also post information on the County's website, www.co.pinal.az.us, under the "air quality" link.
5. The Board of Supervisors has authority to adopt air quality rules. A.R.S. §49-479. Following publication of this Register notice and a 30 day public comment period, the Control Officer will conduct an oral proceeding to receive comment. A summary of comments received, responses thereto, and a final rule-revision proposal will then be submitted to the Board of Supervisors for consideration and possible adoption. The date and location for the hearing-of-adoption before the Board of Supervisors will be separately noticed in accord with the requirements of A.R.S. §49-479 and 40 C.F.R. §51.102. A tentative date for that hearing is set forth below.
6. Given that this proposal responds to statutory mandates, there are no supporting studies nor has the District prepared an economic, small business or consumer impact discussion. Prior notices regarding these same rule provisions were published at 14 A.A.R. 1153 (4/11/2008) and 14 A.A.R. 1991 (5/16/2008). The public hearing for the first of those rule revision proposals was continued until September 10, 2008. The public hearing for the second of those proposals is scheduled for June 18, 2008. Since this proposal effectively supersedes portions of both of those earlier proposals, the District anticipates that the Board will continue the June 18 hearing to September 10 also, and on September 10th will terminate both of the earlier proceedings and then take action on this proposal.
7. Among other differences, this notice differs from the prior notices in the following particulars:
 - This proposal eliminates the former proposed option to assess threshold friction velocity as a means to demonstrate that a surface qualifies as "dustproof" in T1N R8E;
 - For purposes of assessing whether a surface qualifies as "stabilized," a test method has been specified for defining the threshold friction velocity of a surface;
 - In defining an obligation to maintain a surface as "dustproof" or "stabilized" in T1N R8E, the inferential allowance for control officer discretion has been eliminated by striking the references to existing "reasonable precaution" rules;
 - For purposes of defining a maintenance obligation for a "dustproof" or "stabilized" surface in T1N R8E, new objective requirements have been defined based on the length of visible trackout from the affected parcel;

- In defining an obligation to provide "dustproof" parking, maneuvering and ingress and egress areas, the applicability to residential uses has been clarified;
 - In defining an obligation to "stabilize" parking, maneuvering and ingress and egress areas, the statutory phrase "residential building" has been introduced;
 - The Area A limitations on vehicle parking and use on unpaved or unstabilized vacant lots have been revised to focus on trespass activity, and to exempt an owner and those having permission from the owner;
 - Those same limitations on vehicle parking and use have been revised to define when a lot is vacant;
 - The proposal to designate any of these revisions as elements of the Arizona State Implementation Plan has been deleted.
8. If adopted, these revisions will take effect and become enforceable upon adoption by the Board of Supervisors, with the exception of deferred enforcement where allowed by statute and specified by rule.
9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules, or, if no proceeding is scheduled, where, when, how persons may request an oral proceeding of the proposed rules:
- A. Stakeholder's Workshop: None scheduled.
- B. Stakeholder's Meeting: None scheduled.
- C. Oral Proceeding; formal opportunity to submit comments for the rulemaking record, regarding the proposed rules.
- Date: August 7, 2008
- Time: 9:00 a.m.
- Location: Pinal County Complex
Emergency Operations Center (EOC), Building F
31 N. Pinal Street
Florence, Arizona 85232
- D. Public Hearing before Board of Supervisors (Tentative schedule)
- Date: Wednesday, September 10, 2008
- Time: 9:30 a.m.
- Location: Pinal County Complex,
Board of Supervisors Hearing Room, Building A
31 N. Pinal Street
Florence, Arizona 85232

10. Text of Proposed Rule Revisions

New rules are identified as such. Changes to existing rules are shown by strike-through and underlining.

Chapter 4. - Emissions from Existing and New Non-Point Sources

Article 4 - Nonattainment Area Rules; Dustproofing for Commercial Parking, Drives and Yards (NEW)

§4-4-100. Dustproofing for Commercial Parking, Drives and Yards; Applicability (NEW)

A. Geographic Applicability.

The "affected area" under this rule includes the Pinal-County-portion of the Phoenix Planning Area Serious PM₁₀ nonattainment Area, identified as Township 1 North, Range 8 East, Gila & Salt River Base and Meridian.

B. Affected Parcels; Commercial Property.

Property subject to this rule:

1. Includes any parcel, contiguous parcels, or any proximate combination of parcels actually used for commercial purposes, including retail, office, meeting, governmental, industrial, service-business or commercial storage purposes;
2. Includes any single deeded or platted parcel having built thereon a residential building or buildings with five or more residential units;
3. Includes any common parking area at an otherwise affected parcel; and
4. Excludes any right-of-way legally established and actually maintained for travel by the public or to provide vehicular access to public utilities.
5. Excludes earthmoving activity at a site, or that portion of a site, covered by mitigation requirements under dust registration issued by the Pinal County Control Officer.

C. Affected surfaces at a commercial property.

1. Affected surfaces include any areas utilized on a regular basis for parking, maneuvering or ingress and egress of on- or off-road vehicles. Access lanes and working surfaces for vehicles shall qualify as affected surfaces.

2. Undisturbed surfaces are not affected surfaces, but only if those undisturbed surfaces are fenced or otherwise clearly distinguished from affected surfaces. Delineated long-term storage stalls, where a vehicle, trailer or other item is stored and not normally removed and replaced more than once in a sixty-day period shall also be considered undisturbed surfaces.

§4-4-110. Control Requirement (NEW)

A. On and after the effective date, the owner and/or operator of any commercial property shall install and maintain permanent dustproof surfacing for all affected surfaces. For purposes of this rule, "owner or operator" means any person who owns, leases, operates, controls, or supervises an affected area.

B. For purposes of this rule, permanent dustproofing shall consist of one of the following, implemented in a manner that meets the maintenance standard of this rule:

1. Paving with asphaltic concrete;
2. Paving with Portland cement based concrete;
3. Surfacing with a penetrating asphalt and a gravel surface, commonly known as chip sealing;
4. Surfacing with and uniformly maintaining a two-inch deep layer of rock having a nominal size of 1/4" or larger;
5. Surfacing with a two-inch deep layer of recycled asphalt; or
6. Surfacing with any other surface treatment that has been approved in writing by the Pinal County Control Officer.

C. Maintenance

Permanent dustproofing shall be maintained in a manner that prevents visible track-out.

§4-4-120. Deferred enforcement date (NEW)

The Control Officer shall commence enforcement of the requirements of this Article no sooner than October 1, 2008.

Article 5 - Nonattainment Area Rules; Stabilization for Residential Parking and Drives (NEW)

§4-5-150. Stabilization for Residential Parking and Drives; Applicability (NEW)

A. Geographic Applicability.

The "affected area" under this rule includes the Pinal-County-portion of the Phoenix Planning Area Serious PM₁₀ nonattainment Area, identified as Township 1 North, Range 8 East, Gila & Salt River Base and Meridian.

B. Affected Parcels; Residential Property.

Property subject to this rule:

1. Includes any single deeded or platted parcel having built thereon a residential building or buildings with four or fewer residential units;
2. Excludes any publicly owned right-of-way legally established and actually maintained for travel by the public;
3. Excludes any right-of-way legally established to provide vehicular access to public utilities; and
4. Excludes earthmoving activity at a site, or that portion of a site, covered by mitigation requirements under dust registration issued by the Pinal County Control Officer.

C. Affected Surfaces at a Residential Property.

1. Affected surfaces include any areas in excess of 3,000 square feet utilized on a regular basis for parking, maneuvering or ingress and egress of on- or off-road vehicles.

2. Undisturbed surfaces are not affected surfaces, but only if those undisturbed surfaces are fenced or otherwise clearly distinguished from affected surfaces. Delineated long-term storage stalls, where a vehicle, trailer or other item is stored and not normally removed and replaced more than once in a sixty-day period shall also be considered undisturbed surfaces.

§4-5-160. Control Requirement (NEW)

A. On and after the effective date, the owner and/or operator of any residential property shall install and maintain paving or a stabilization method for all affected surfaces. For purposes of this rule, "owner or operator" means any person who owns, leases, operates, controls, or supervises an affected area.

B. For purposes of this rule, a stabilization method shall consist of one of the following, implemented in a manner that meets the maintenance standard of this rule:

1. Paving with asphaltic concrete;
2. Paving with Portland cement based concrete;
3. Surfacing with a penetrating asphalt and a gravel surface, commonly known as chip sealing;
4. Surfacing with and uniformly maintaining a two-inch deep layer of rock having a nominal size of 1/4" or larger;
5. Surfacing with a two-inch deep layer of recycled asphalt;
6. Watering with sufficient frequency so as to maintain a crust on the surface;

7. Surfacing with any other surface treatment that has been approved in writing by the Pinal County Control Officer; or

8. Initially, and at such other times as may be requested by the Control Officer, demonstrating to the satisfaction of the Pinal County Control Officer on a form as required by the Control Officer, that the average threshold friction velocity of the native soil surface, corrected for non-erodible elements, is at least 100 cm/second. Threshold friction velocity shall be assessed in accord with §4-9-300.

C. Maintenance

Surface stabilization shall be maintained in a manner that prevents visible track-out in excess of ten feet in length.

§4-5-170. Deferred enforcement date

The Control Officer shall commence enforcement of the requirements of this Article no sooner than October 1, 2009.

Article 6 - Restrictions on Vehicle Parking and Use on Vacant Lots (NEW)

§4-6-200. Unpaved and Unstabilized Vacant Lots; Restriction on Vehicle Parking and Use; Applicability (NEW)

A. Geographic Applicability.

1. The "affected area" under this rule includes the PM₁₀-non-attainment-area portion of the Pinal-County-portion of Area A as defined at A.R.S. §49-541, including:

Township 1 north, range 8 east

2. The "affected area" under this rule also includes the PM₁₀-attainment-area portion of the Pinal-County-portion of Area A as defined at A.R.S. §49-541, including:

Township 1 north, range 8 east

Township 1 north, range 9 east

Township 1 south, range 8 east

Township 1 south, range 9 east

Township 2 south, range 8 east

Township 2 south, range 9 east

Township 3 south, range 7 east

Township 3 south, range 8 east

Township 3 south, range 9 east

B. Affected Parcels; Vacant Lots.

Property subject to this rule includes any unpaved or unstabilized vacant lot. For purposes of this rule, a vacant lot constitutes a parcel that is not occupied by a structure properly permitted under the prevailing building code. For purposes of this rule, a stabilized surface constitutes a surface that does not produce visible trackout when a vehicle leaves the lot, and shall consist of one of the following:

1. Paving with asphaltic concrete;
2. Paving with Portland cement based concrete;
3. Surfacing with a penetrating asphalt and a gravel surface, commonly known as chip sealing;
4. Surfacing with and uniformly maintaining a two-inch deep layer of rock having a nominal size of 1/4" or larger;
5. Surfacing with a two-inch deep layer of recycled asphalt;
6. Watering with sufficient frequency so as to maintain a crust on the surface;
7. Surfacing with any other surface treatment that has been approved by the Pinal County Control Officer; or

8. Initially, and at such other times as may be requested by the Control Officer, demonstrating to the satisfaction of the Pinal County Control Officer on a form as required by the Control Officer and pursuant to a test method approved by the Control Officer, that the average threshold friction velocity of the native soil surface, corrected for non-erodible elements, is at least 100 cm/second. Threshold friction velocity shall be assessed in accord with §4-9-300.

§4-6-210. Control Requirement (NEW)

1. A property owner or operator shall restrict vehicle parking and use on an unstabilized vacant lot. For purposes of this rule, "owner or operator" means any person who owns, leases, operates, controls, or supervises an affected area.

2. No person shall park any motor vehicle on any vacant unstabilized lot without the permission of the owner or operator. The vehicle operator and all persons in whose names the vehicle is registered shall be jointly and severally prima facie responsible for any violation of this prohibition.

3. The requirements under this rule shall not apply to an owner, operator, or anyone using or parking a vehicle with the permission of the owner or operator.

Article 7 - Reserved (NEW)

Article 8 - Nonattainment Area Rules; Requirement for Stabilization of Disturbed Areas at Vacant Lots (NEW)

§4-8-260. Stabilization of Disturbed Areas at Vacant Lots; Applicability (NEW)

A. Geographic Applicability.

The "affected area" under this rule includes the Pinal-County-portion of the Phoenix Planning Area Serious PM₁₀ nonattainment Area, identified as Township 1 North, Range 8 East, Gila & Salt River Base and Meridian.

B. Affected Parcels; Vacant Lots.

1. For purposes of this rule, "vacant lot" means a parcel of land on which there are no approved or permitted permanent or temporary buildings or structures.

2. For purposes of this rule, where an owner holds a non-vacant lot, "vacant lot" does not include a contiguous parcel or parcels adjoining that non-vacant lot, but the exemption applies only if the parcels are subject to common legal or equitable ownership and the parcels are used in fact as a single lot.

3. For purposes of this rule, a "vacant lot" does not include the site of a disturbed surface area that is subject to control of dust generating operations pursuant to a dust registration issued by the Control Officer pursuant to Chapter 4, Article 3 of these rules.

4. For purposes of this rule, a "vacant lot" does not include the site of a disturbed surface area that is subject to an industrial permit issued by the Control Officer pursuant to Chapter 3 of these rules.

C. Affected Areas Within Vacant Lots; Disturbed Surfaces

1. For purposes of this rule, "disturbed surface" means a portion of the earth's surface or material placed on the earth's surface that has been physically moved, uncovered, destabilized or otherwise modified from its undisturbed native condition if the potential for the emission of fugitive dust is meaningfully increased by the movement, destabilization or modification.

2. For purposes of this rule, "disturbed surface" does not include:

a. Any area that is subject to a control of dust generating operations pursuant to dust registration issued by the Control Officer pursuant to Chapter 4, Article 3 of these rules.

b. Any area that is disturbed as a result of normal farm cultural practice.

c. Any area while the activity causing the disturbance is still proceeding.

§4-8-270. Stabilization Notice; Right of Entry; Recoupment of Costs; Right to Appeal (NEW)

A. If the Control Officer finds that an unpaved disturbed surface at a vacant lot subject to this Article requires stabilization, the Control Officer may provide a written notice to the owner or the owner's agent that the unpaved disturbed surface is required to be stabilized.

B. The notice shall:

1. Be given not less than thirty days before the date set for compliance;

2. Recite the factual basis for the notice;

3. Include a legal description of the property;

4. Inform the owner that if he does not stabilize the lot prior to the compliance date, the county will have authority to enter the lot to stabilize the disturbed surface at the expense of the owner;
 5. Include the estimated cost to the county for the stabilization if the owner does not comply;
 6. Inform the owner that the notice constitutes an appealable agency action, and that the owner has a right of administrative appeal pursuant to A.R.S. §49-471.15.
- C. The notice shall be either personally served or mailed by certified mail to the owner's statutory agent, to the owner at the owner's last known address or to the address to which the tax bill for the property was last mailed. For purposes of establishing a compliance date and triggering an appeal period, mailed notice shall be effective upon mailing.

§4-8-280. Deferred enforcement date (NEW)

The Control Officer shall commence enforcement of the requirements of this Article no sooner than October 1, 2008.

Article 9 - Test Methods (NEW)

§4-9-300. Test Method; Threshold Friction Velocity (NEW)

- A. Threshold friction velocity ("TFV") constitutes a measure of surface erodability. Assessment of TFV under this rule shall utilize a field-sieving procedure and a mathematical adjustment based on a quantitative assessment of non-erodible geologic elements that may be present.
- B. Step 1. Obtain and stack a set of sieves with the following openings:
1. 4 millimeters (mm); Tyler Sieve No. 5; ASTM 11 Sieve No. 5.
 2. 2 mm; Tyler Sieve No. 9; ASTM 11 Sieve No. 10.
 3. 1 mm; Tyler Sieve No. 16; ASTM 11 Sieve No. 18.
 4. 0.5 mm; Tyler Sieve No. 32; ASTM 11 Sieve No. 35.
 5. 0.25 mm; Tyler Sieve No. 60; ASTM 11 Sieve No. 60.
 6. A collector pan.
 7. A cover.
- C. Step 2. Stack the sieves and pan in size-order, with the largest openings at the top and the pan at the bottom. Collect a sample of loose surface material from an area at least 30 centimeters (cm) by 30 cm to a depth of approximately 1 cm using a brush and dustpan or other similar device. Only collect soil samples from dry surfaces (i.e. when the surface is not damp to the touch). Remove any rocks larger than 1 cm in diameter from the sample. Carefully pour the sample into the top sieve (4 mm opening), minimizing escape of particles from the sample. Cover the sieve-stack with the lid.
- D. Step 3. Manually swing the sieve-stack in a broad, circular pattern in a horizontal plane. Move the sieve-stack at a speed just necessary to audibly verify some relative horizontal motion of the sample within the sieve-stack. Complete twenty circular sweeps, ten clockwise and ten counter-clockwise. Remove the lid and un-stack the sieves in decreasing size-order. As each sieve is removed, examine the screen for loose particles. If loose particles have not been sifted to the finest sieve through which they can pass, reassemble the sieve-stack and cover and rotate the stack through an additional ten sweeps, five clockwise and five counter-clockwise. After disassembling the sieve-stack, slightly tilt and gently tap each sieve and the collector pan so that the material collects along one side. In so doing, minimize escape of particles into the air.
- E. Step 5. Line up the sieves and the pan and visually inspect the collected material to assess the relative volumes of material in each. If visual inspection is not sufficient to distinguish the relative volumes, pour the respective contents into a graduated cylinder to precisely measure the volume in each sieve and pan.
- F. Step 6. Identify the sieve or pan with the greatest volumetric catch, and define an initial TFV according to the following correlation: 4 mm sieve - 135 cm/sec.; 2 mm sieve - 100 cm/sec.; 1 mm sieve - 76 cm/sec.; 0.5 mm sieve - 58 cm/sec.; 0.25 mm sieve - 43 cm/sec.; collector pan - 30 cm./sec.
- G. Step 7. Quantify an average TFV for the affected area. Repeat steps 1 through 6 for two other representative sites within the affected area, and arithmetically average the three TFV values to define an average initial TFV.
- H. Step 8. Adjust the TFV to correct for non-erodible elements. Non-erodible elements are distinct elements in the random portion of the overall conditions of the affected area that are larger than 1 cm in diameter, remain firmly in place during a wind episode, and inhibit soil loss by consuming part of the shear stress of the wind. Non-erodible elements include stones and bulk surface material but do not include flat or standing vegetation.
- I. Step 9. Select and mark off a 1 meter by 1 meter survey area that represents the general rock distribution on the surface. For these purposes, non-erodible, non-vegetative matter qualifies as "rock." Without moving any of the surface material, visually assess the surface to determine whether rocks larger than 1 cm (3/8 inch) are present. If the rocks are of relatively consistent dimension, count the number of rocks in the survey area. If the size of the rocks differs substantially, define small, medium and large size categories and count the number of rocks in each category.

- J. Step 10. Remove one or two representative rocks from each size category (if necessary), and measure the length and width of each. Calculate an area for each size category (if necessary) based on the measured length and width.
- K. Step 11. Calculate an aggregate area for each size category (if necessary), based on the number of rocks and measured representative individual rock-area. If multiple size categories were defined, total the aggregate areas for the categories. Divide the calculated aggregate area by two, and then divide that product by the area of the original sample area to calculate a %-coverage. For example, within a 1-meter (100 cm) square sample area, 250 rocks with a 1 cm x 1.5 cm length/width produces a coverage of $250 \times 1 \times 1.5 / 2 / (100 \times 100) = 1.88\%$ coverage.
- L. Step 12. Quantify an average coverage for non-erodible elements within the overall affected area. Repeat steps 8 through 11 for two other sites within the affected area, and arithmetically average the three coverage values to define an average non-erodible area coverage.
- M. Step 13. Based on the calculated average coverage by non-erodible elements, select a TFV correction factor according to the following correlation: non-erodible element coverage > 10% - correction factor = 5; non-erodible element coverage < 10% but > 5% - correction factor = 3; non-erodible element coverage < 5% but > 1% - correction factor = 2; non-erodible element coverage < 1% - correction factor = 1.
- N. Step 14. Using the initial average TFV value from Step 7, multiply by the TFV correction factor from Step 13 to calculate a representative TFV for the site.